to extend the time after the expiry of the three months period when s 39 of the 1948 Ordinance was expressly left out from the Eleventh Schedule to the Constitution. The appeal was accordingly allowed. Application for writ of habeas corpus was granted.

Appeal allowed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Hong Siew Sin & Anor v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NOS 05-128-89 AND 05-129-89
HASHIM YEOP A SANI CJ (MALAYA), MOHAMED YUSOFF AND GUNN CHIT TUAN SCJJ
16 FEBRUARY 1990

Preventive Detention — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Extension of orders — Whether extension orders complied substantially with the requirements of the Act — Dangerous Drugs (Special Preventive Measures) Act 1985, ss 6(1) & 11A

In this case, the two appellants had been detained under the Dangerous Drugs (Special Preventive Measures) Act 1985 and the Minister of Home Affairs had extended the detention of the appellants. It was argued that the extensions were invalid because the dates referred to in the extension orders as the commencement dates coincided with the last dates of the first detention orders. The extension orders read, as regards the period of extension, to the effect 'for two further years to begin from the date of the expiration of the detention order' but immediately after these words there appeared in each case the words to the effect 'that is from 4 May 1989' in the case of the first appellant and 'that is from 13 May 1989' in the case of the second appellant. The dates referred to in both the orders were actually the dates of the expiry of the current detention orders. The learned trial judge in this case applied the maxim 'de minimis non curat lex' and dismissed the application. The appellants appealed.

Held, dismissing the appeals:

(1) It is clear from the language of s 11A(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 that the extension order under that section must commence immediately upon the expiration of the period of the current order.

(2) Taken as a whole, the extension orders have in fact substantially complied with s 11A of the Dangerous Drugs (Special Preventive Measures) Act 1985. The extension orders should be read as a whole and the words specifying the dates should be ignored either as a genuine mistake or a miscalculation of the dates or a trifling irregularity or simply superfluous.

Cases referred to

1 *Makhan Singh* v *State of Punjab* [1964] 2 Cr LJ 217 (refd)
2 *Greene* v *Secretary of State for Home Affairs* [1942] AC 284 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 6(1), 11A(1)

Appeal from: Criminal Application No 44-35-89 (High Court, Penang)

Karpal Singh for the appellants.
Balia Yusof bin Wahi (Senior Federal Counsel) for the respondents.

Cur Adv Vult

[Di dalam kes ini, kedua-dua perayu telah ditahan di bawah Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 dan Menteri Hal Ehwal Dalam Negeri telah melanjutkan tahanan mereka. Hujah yang telah dibuat oleh mereka ialah perlanjutan itu tidak sah oleh kerana tarikh yang disebutkan di dalam perintah-perintah perlanjutan sebagai tarikh permulaan adalah sama dengan tarikh akhir tahanan mereka. Perintah-perintah perlanjutan itu menyebut 'selama tempoh dua tahun selanjutnya mulai dari tarikh tamat tempoh perintah tahanan itu', akan tetapi sejurus selepas itu disebutkan bagi tiap-tiap perintah itu perkataan 'iaitu dari 4 Mei 1989' bagi perayu pertama dan 'iaitu dari 13 Mei 1989' bagi perayu kedua. Tarikh yang disebut di dalam kedua-dua perintah itu sebetulnya tarikh tamatnya perintah tahanan yang berkuatkuasa pada masa itu. Hakim yang arif telah mengenakan maxim 'de minimis non curat lex' (bermaksud undang-undang tidak menghiraukan perkara yang sangat kecil). Perayu-perayu telah membuat rayuan.

Diputuskan, menolak rayuan-rayuan itu:

(1) Adalah jelas dari bentuk bahasa s 11A(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 bahawa perintah perlanjutan di bawah seksyen itu hendaklah bermula terus selepas tamatnya masa perintah tahanan yang berkuatkuasa pada masa itu.

(2) Dipandang dari segi keseluruhannya, perintah-perintah perlanjutan itu telah mematuhi s 11A Akta Dadah Berbahaya (Langkah-langkah Percegahan Khas) 1985. Perintah-perintah perlanjutan itu hendaklah dibaca keseluruhannya dan perkataan-perkataan menyebut tarikh-tarikh itu hendaklah tidak diendahkan sebagai kesilapan tidak sengaja atau kiraan yang salah mengenai tarikh-tarikh itu atau perkara luar aturan yang sangat kecil atau yang lebih daripada yang diperlukan.]

Hashim Yeop A Sani CJ (Malaya) (delivering the judgment of the court): Both these appeals were concerned with only one crucial issue. That issue is whether the orders which extended the detention of the appellants under s 11A of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act') are invalid because the dates referred to in the orders as the commencement dates coincide with the last dates of the first detention orders. According to Encik Karpal Singh, counsel for the appellants, this irregularity amounted to double detention, citing *Makhan Singh* v *State of Punjab*.[1]

According to s 11A(1) of the Act, the minister may at any time before the expiration of the duration of a detention order under s 6(1) of the Act direct that the duration of the order be extended for a period not exceeding two years commencing immediately upon the expiration of the current detention order. It is clear from the language of

that section that the extension order under that section must commence *immediately upon the expiration* of the period of the current order.

Both the extension orders we are concerned with in the appeals in effect reproduced the language of s 11A(1) of the Act. In Bahasa Malaysia, each of the extension orders reads as regard to period of extension as follows: 'selama tempoh dua (2) tahun selanjutnya mulai dari tarikh tamat tempoh perintah tahanan itu'. However, immediately after those words, on the commencement there appeared the words 'iaitu dari 4 haribulan Mei 1989' (in the case of Criminal Appeal No 05-128-89) and 'iaitu dari 13 haribulan Mei 1989' (in the case of Criminal Appeal No 05-129-89).

The dates referred to in both the orders were actually the dates of the expiry of the current detention orders. At the stroke of midnight on 4 May 1989 (in the case of Criminal Appeal No 05-128-89) and 13 May 1989 (in the case of Criminal Appeal No 05-129-89), the period of the current detention orders ended and the period of the extension orders commenced.

Taken as a whole, our view is that the extension orders have in fact substantially complied with s 11A of the Act. The additional words which referred to specifying the dates cannot be regarded as rendering the extension orders invalid.

The learned judge was quite correct in applying the maxim de minimis non curat lex (the court should not deal in trivialities). Looking at the problem in another way, it is not so much the application of the de minimis rule but that the extension orders in question should be read as a whole and the words specifying the dates referred to earlier should be ignored either as a genuine mistake or a miscalculation of the dates or a trifling irregularity or simply superfluous — see also *Greene* v *Secretary of State for Home Affairs*[2] at pp 298-300. The appeals were accordingly dismissed.

Appeals dismissed.

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

Ker Chee Chuan v Katlyn Enterprise (M) Sdn Bhd

HIGH COURT (MUAR) — ORIGINATING MOTION NO 25-7 OF 1989
RICHARD TALALLA JC
22 FEBRUARY 1990

Land Law — Caveat — Private caveat entered by respondent — Land registered in respondent's name — Public auction of land — Order to compel delivery of title — Dispute on land ownership — Allegation by respondent of irregularities of service of writ and auction sale — Application to set aside auction sale — Principles governing removal of caveat — Whether serious question to be tried — Balance of convenience — Whether applicant bona fide purchaser

The applicant is seeking an order that a private caveat entered by the respondent against the land held under Grant No 10726 for lot no 1379, mukim of Simpang Kanan, District of Batu Pahat ('the land'), be removed. The applicant bought the land at a public auction for $200,500 pursuant to an order of court. The respondent claimed that it was at all material times the registered proprietor of the land having bought the land from one Suppiah ('Suppiah'), and had paid him in full for the land. Suppiah commenced an action against the respondent claiming a sum of $129,408 which he alleged to be the balance due in respect of the sale of the land by him to the respondent. Judgment in default of appearance was obtained and thereafter Suppiah proceeded to obtain execution of the judgment which resulted in the sale by public auction at which the applicant was the successful bidder. The respondent applied to set aside the auction sale and alleged that there were irregularities in the service of the writ, the execution proceedings and that the provisions of the National Land Code 1965 and the Rules of High Court 1980 had been breached. The applicant claimed to be a bona fide purchaser for value without notice.

Held, dismissing the application:

(1) The law in relation to an application for an order for removal of a caveat such as the present application is well settled. The respondent caveator must first satisfy the court that on the evidence presented to the court, his claim to an interest in the property does raise a serious question to be tried and, having done so, he must go on to show that on the balance of convenience it would be better to maintain the status quo until the trial of the action, by preventing the caveatee from disposing of his land to some third party. The court found that the respondent has discharged the onus placed on it to establish that the caveat should remain pending disposal of the main issue, viz who is the true and rightful owner of the land in question.

(2) There should be a trial to ascertain whether or not the respondent paid Suppiah for the land. It also has to be judicially determined whether the writ in Suppiah's case was duly served on the respondent and whether the applicant was a bona fide purchaser under s 340 of the National Land Code 1965.

[*Editorial Note*: The applicant has appealed to the Supreme Court vide Civil Appeal No 02-128 of 1990.]

Cases referred to

1 *Eng Mee Yong & Ors* v *V Letchumanan* [1979] 2 MLJ 212 (folld)
2 *Chin Cheng Hong* v *Hameed & Ors* [1954] MLJ 169 (refd)
3 *Mahadevan & Anor* v *Patel* [1975] 2 MLJ 207 (refd)